



41

Docket No.: O2911.0007/P043-D
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
John R. Plate et al.

Application No.: 09/335,377

Art Unit: 3611

Filed: June 17, 1999

Examiner: E. D. Culbreth

For: FORKLIFT STABILIZING APPARATUS

REQUEST FOR RECONSIDERATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Dear Sir:

In response to the Office Action dated April 14, 2004 (Paper No. 28), please reconsider the outstanding rejection in light of the following remarks.

Claims 1-19 and 22-33 stand rejected as being based upon a defective reissue declaration. Initially, in paragraph 2, the Office Action states that “[r]eceipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection An example of acceptable language to be used ... is as follows: ‘Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant.’”

The Applicants direct the Examiner's attention to page 1, lines 19-20 of the Reissue Declaration and Power of Attorney ("Reissue Declaration"). The subject passage reads as follows: "All errors being corrected in the attached reissue application arose without any deceptive intention of the applicants." This statement is in full compliance with MPEP § 1414.III. Thus, the Reissue Declaration does contain the required statement, and the rejection should be withdrawn.

Next, the Office Action states that the Reissue Declaration is "defective because it fails to identify at least one error which is relied upon to support the reissue application." Office Action, paragraph 3. To explain why the Reissue Declaration is "defective," the Office Action offers the following: "The errors listed in the specification are not specific enough. Specific limitations must be referred to in the declaration in the form of specific claim language. Specific changes or amendments to the claims must be identified. The difference between new claims and the original claims must be pointed out." *Id.*

The Reissue Application fully meets the above requirements. With reference to page 1, lines 13-18, the Reissue Declaration states as follows (with emphasis added):

We believe the '119 patent to be wholly of partly inoperative by reason of claiming less than we had the right to claim in the patent. In particular, claims 1, 6, 7 and 9 contain recitations concerning a stabilizer apparatus that are too limiting of the invention and unnecessary in view of the prior art. Claims 20 through 33 of the attached reissue application have limitations similar to those of claim 18, but define the invention with greater breadth.

With respect to the Office Action's statement that "[s]pecific limitations must be referred to in the declaration in the form of specific claim language," the Reissue Declaration identifies such language – "recitations concerning a stabilizer apparatus." See '119 patent:

claim 1, col. 14, ll. 29-59; claim 6, col. 15, l. 41 – col. 16, l. 4; claim 7, col. 16, ll. 23-53; and claim 9, col. 17, ll. 15-49. And, with respect the Office Action's statement that "[s]pecific changes or amendments to the claims must be identified[, and that the] difference between new claims and the original claims must be pointed out," the Reissue Declaration specifically identifies and points out that in original claims 1, 6, 7 and 9 the recitations of the "stabilizer apparatus ... are too limiting," and that new "[c]laims 20 through 33 of the attached reissue application ... define the invention with greater breadth."

Everything required by the Office Action's rejection is present in the Reissue Declaration. The Reissue Declaration identifies an error – that particular limitations are too limiting – and identifies the specific claims of the patent in which those limitations are found. This is all that is required by MPEP § 1414.II, which states that the Applicant "need only specify ... one of the errors on which reissue is based," and, "[i]n identifying the error, it is sufficient that the reissue oath/declaration identify a single word, phrase, or expression in the specification or in an original claim, and how it renders the original patent ... inoperative or invalid." For these reasons, the outstanding rejections must be withdrawn.


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In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Dated: July 14, 2004

Respectfully submitted,

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